TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~306.~~ 155

JOEL C. GREEN, DONN PIATT, HUGH McGLINCEY, JOHN L. VATTIER, JOHN W. GARRISON, LAFAYETTE LA BOITEAUX, AND M. H. MEDARY, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED DECEMBER 12, 1868.

SUPREME COURT OF THE UNITED STATES.

No. 366.

JOEL C. GREEN, DONN PIATT, HUGH McGLINCEY, JOHN L. VATTIER, JOHN W. GARRISON, LAFAYETTE LA BOITEAUX, AND M. H. MEDARY, PLAINTIFFS IN ERROR,

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1 At a special and adjourned term of the circuit court of the United States within and for the seventh judicial circuit and southern district of Ohio, begun and held at the court-house in the city of Cincinnati, on the first Tuesday, being the fifth day of June, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States of America the ninetieth—present, the Honorable Humphrey H. Leavitt, one of the judges of said court—the following proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
JOEL C. GREEN, DONN PIATT, HUGH McGLINCEY, JOHN L. VATTIER, JOHN W. GARRISON, LAFAYETTE LA BOITEAUX, MAHLON H. MEDARY, and JOHN LOWDER. } Debt.

Be it remembered, that heretofore, to wit, on the 28th day of Feb'y, A. D. 1863, came Flamen Ball, esq., att'y of the United States for this district, on behalf of the plaintiffs, and sued out of the clerk's office of said court a writ of summons ad respondendum; which said summons is in words and figures following, to wit:

Summons.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

The President of the United States of America to the marshal of the southern district of Ohio, greeting:

You are hereby commanded to summon Joel C. Green, Donn Piatt, Hugh McGlincey, John L. Vattier, John W. Garrison, Lafayette La Boiteaux, Mahlon H. Medary, and John Lowder, citizens of and residents in the State of Ohio, if they be found in your district, to be and appear in the circuit court of the United States for the southern district of Ohio
2 aforesaid, at Cincinnati, on the 2d Tuesday in the month of March, 1863, to answer unto the United States of America of a plea of debt, and have you then and there this writ. Witness the Honorable Roger B. Taney, Chief Justice of the United States, this 28th day of February, A. D. 1863, and the 87th year of the independence of the United States of America.

[SEAL.] Attest: JOS. H. GEIGER, *Clerk.*

Upon which was the following endorsement to wit:

Endorsement.

Suit brought on the official bond of Joel C. Green as agent, for paying pensions at Cincinnati; signed & sealed by him & by the other defendants, & dated Oct. 1, 1857; forfeited to the plaintiffs. Debt $100,000 00. Damages 20,000 00. Due in equity 9,334 17. Int. from Jan'y 12, 1863. Flamen Ball, attorney. U. S. south. dist. Ohio.

And afterwards, to wit, on the seventh day of March, in the year last aforesaid, it being the day to which said writ was made returnable, came the U. S. marshal for said district, to whom said writ was in form aforesaid directed, and returned the same into the clerk's office of said court with his proceedings endorsed thereon, in the words and figures following, to wit:

M'ls return.

March 4, '63, served the within-named Joel C. Green & John L. Vattier by copy left at their usual places of residence; and Donn Piatt personally by copy. March 5, 1863, served Hugh McGlincey and Lafayette La Boiteaux by copies left at their usual places of residence; and John W. Garrison personally by copy. John Lowden not found.

A. C. SANDS, *U. S. Marshal,*
By WM. SMALL, *Dept.*

March 6, '63, served the within-named Mahlon H. Medary personally by copy.

A. C. SANDS, *U. S. Marshal,*
By S. COLBY, *Dept.*

And afterwards, to wit, on the thirty-first day of March, in the year last aforesaid, came the U. S. attorney and filed his declaration herein, which is in words and figures following, to wit:

Declaration.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

In the circuit court of the United States within & for the seventh circuit & southern district of Ohio, of the term of April, A. D. 1863.

The United States of America, plaintiffs, complain of Joel C.
3 Green, Donn Piatt, Hugh McGlincey, John L. Vattier, John W. Garrison, Lafayette La Boiteaux, & Mahlon H. Medary, (who were impleaded with John Louden, as to whom the marshal has returned process "not found,") defendants, in a plea of debt, that they render unto the plaintiffs the sum of one hundred thousand dollars, which they owe and unjustly detain.

For that whereas heretofore, to wit, on the first day of October, in the year eighteen hundred and fifty-seven, at the district aforesaid, the defendants & the said John Louden, by their certain writing obligatory of that date, sealed with their seals, & now to the court here shown, acknowledged themselves to be held & firmly bound unto the plaintiffs in the sum of one hundred thousand dollars, for the payment whereof they thereby bound themselves, their heirs, executors, and administrators jointly & severally, which said writing obligatory was and is subject to a certain condition thereunder written; whereby, after reciting that whereas the above-bounden Joel C. Green is appointed an agent for paying pensioners now on or who may hereafter be inscribed on the roll of the agency at Cincinnati, in the State of Ohio, it was conditioned that said Joel C. Green shall well & truly execute & faithfully discharge, according to law and to instructions received by him from proper authority, his duties as agent for paying pensions aforesaid, and he, his heirs, executors, or administrators, shall regularly account, when thereunto required, for all moneys received by him from time to time as agent aforesaid with such person or persons as shall be duly authorized & qualified on the part of the said United States for that purpose, and also refund at any time, when thereto required, any public moneys remaining in his hands unaccounted for, then said obligation should be null & void and of no effect, otherwise to remain and be in full force and

virtue. And although the said Joel C. Green before and at and after the date of the said writing obligatory, to wit, on the day & year
4 last aforesaid, at the district aforesaid, took upon himself the discharge of the duties of said office, and did, as such agent for paying pensions at Cincinnati, in the State of Ohio, to wit, at the district aforesaid, of the public money of the plaintiffs then & there and from time to time afterwards received divers large sums of such money, to wit, one hundred thousand dollars to & for the use of the plaintiffs, and to be disbursed by him as such agent, for paying pensions at the agency at Cincinnati, in the State of Ohio, and did also from time to time thenceforth render to the proper officer of the Treasury Department of the United States his accounts for such receipts & disbursements; yet the plaintiffs say that afterwards, to wit, on the twelfth day of January, in the year eighteen hundred & sixty-three, the accounts of the said Joel C. Green as such agent for paying pensions at the agency at Cincinnati, in the State of Ohio, for his receipts and disbursements and payments were settled and adjusted at the treasury of the United States, and a balance then & there found to be due from the said Joel C. Green, as such agent for paying pensions at the agency at Cincinnati, in the State of Ohio, as aforesaid, of the moneys of the plaintiffs, so by him received as aforesaid, of a large sum of money, to wit, of the sum of nine thousand three hundred & thirty-four $\frac{17}{100}$ dollars, with interest thereon from the 12th day of January, 1863 aforesaid, to wit, at the district aforesaid; yet the said Joel C. Green, not regarding the duties of his said office nor the covenant of the said writing obligatory in that behalf, although often thereunto required by the plaintiffs, hath not well & truly executed & faithfully discharged, according to law & to instructions received by him from the proper authority, his duties as agent for paying pensions aforesaid, nor hath he, the said Joel C. Green, nor have the said Donn Piatt, Hugh McGlincey, John L. Vattier, John W. Garrison, Lafayette La Boyteaux, Mahlon H. Medary, & John Lowden, or either of them, then and there regularly accounted for all moneys
5 received by him, the said Joel C. Green, from time to time, as agent as aforesaid, with the persons duly authorized & qualified on the part of the plaintiffs to require such accounting; and although then and there often required so to do, the said Joel C. Green hath not refunded, nor have the said Donn Piatt, Hugh McGlincey, John L. Vattier, John W. Garrison, Lafayette La Boyteaux, Mahlon H. Medary, & John Lowden, or either of them, refunded at any time any public moneys remaining in the hands of the said Joel C. Green unaccounted for, nor has the said Joel C. Green, or have the said Donn Piatt, Hugh McGlincey, John L. Vattier, John W. Garrison, Lafayette La Boyteaux, Mahlon H. Medary, and John Lowden, or either of them, although thereunto required by the proper persons authorized & qualified on the part of the plaintiffs, then and there accounted for & paid to the plaintiffs the said sum of money so found due & owing to the plaintiffs as aforesaid, or any part thereof, according to his & their duty & the said covenant, but the same remains wholly unpaid & unsatisfied to the plaintiffs by the said Joel C. Green, and by the said Donn Piatt, Hugh McGlincey, John L. Vattier, John W. Garrison, Lafayette La Boyteaux, Mahlon H. Medary, & John Lowden, & each of them, whereby the said writing obligatory has become forfeited to the plaintiffs, and an action hath accrued to them to demand and have of the defendants & the said John Lowden the said sum of one hundred thousand dollars above demanded; yet the defendants & the said John Lowden, although often requested so to do by the plaintiffs

and their proper officers and agents, have not paid the said last-mentioned sum of money to the plaintiffs; but the same or any part thereof to pay the defendants and the said John Lowden have hitherto wholly neglected and refused, to the damage of the plaintiffs of twenty
6 thousand dollars; & thereupon they bring this suit.

By F. BALL,
Att'y U. S. Southern District of Ohio.

And also, on the day and year last aforesaid, came the U. S. attorney and filed the bond of the defendants; which said bond is in the words and figures following, to wit:

Bond.

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT,
12th September, 1862.

Pursuant to the act of Congress of 22d February, 1849, I hereby certify that the annexed is a true copy of the official bond of Joel C. Green, late pension agent at Cincinnati, Ohio, now on file in this department.

In witness whereof, I have hereunto set my hand and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

[SEAL.]

S. P. CHASE,
Secretary of the Treasury.

Know all persons by these presents, that we, Donn Piatt, Hugh McGlincey, John L. Vattier, Lafayette La Boitaux, John W. Garrison, Mahlon H. Medary, John Lowden, and Joel C. Green, all of Cincinnati, Hamilton county, State of Ohio, are holden and stand firmly bound and obliged unto the United States of America, or their certain attorney, in the penal sum of one hundred thousand dollars, current money of the said United States, well and truly to be paid into their treasury; for which payment, faithfully to be made and done, we, the said Joel C. Green, Donn Piatt, Hugh McGlincey, John L. Vattier, Lafayette La Boiteaux, John W. Garrison, Mahlon H. Medary, and John Lowden, do bind ourselves, and each of us, our heirs, executors, and administrators, and each and every of them, for and in the whole, jointly, severally, and firmly by these presents.

Signed with our hands and sealed with our seals this first day of October, in the year one thousand eight hundred and fifty-seven.

The condition, however, of this obligation is such that whereas the above-bounden Joel C. Green is appointed an agent for paying pensions now on or who may hereafter be inscribed on the roll of the agency at Cincinnati, in the State of Ohio: Now, if the said Joel C. Green
7 shall well and truly execute, and faithfully discharge, according to law and to instructions received by him from proper authority, his duties as agent for paying pensioners aforesaid, and he, his heirs, executors, or administrators shall regularly account, when thereunto required, for all moneys received by him, from time to time, as agent aforesaid, with such person or persons as shall be duly authorized and qualified on the part of the said United States for that purpose, and also refund at any time, when thereunto required, any pulic moneys remaining in his

hands unaccounted for, then this obligation shall be null, void, and of no effect, otherwise to remain and be in full force and virtue.

Done at Cincinnati, in the State of Ohio, the day and year before written.

JOEL C. GREEN. [SEAL.]
DONN PIATT. [SEAL.]
H. McGLINCEY. [SEAL.]
J. L. VATTIER. [SEAL.]
J. W. GARRISON. [SEAL.]
L. LA BOITAUX. [SEAL.]
M. H. MEDARY. [SEAL.]
JOHN LOWDEN. [SEAL.]

Signed, sealed, and delivered in the presence of—
W. W. GUTHRIE.
RICHARD HILL.

I, John McLean, judge of the Supreme Court of the United States, do certify that Joel C. Green and Donn Piatt, H. McGlincey, J. L. Vattier, J. W. Garrison, L. La Boitaux, M. H. Medary, & John Lowden, who have signed the above obligation, in conjunction with Joel C. Green, are sufficient sureties.

JOHN McLEAN

STATE OF OHIO, *Hamilton County, Oct. first*, 1857, *ss:*

I, Lafayette La Boitaux, one of the sureties on the within bond, do depose and say that I am worth, in unincumbered property, thirty thousand dollars and upwards, after the payment of my just debts and liabilities.

L. LA BOITAUX.

Sworn to and subscribed before me the day and year above written.

RICHARD HILL,
Notary Public.

STATE OF OHIO, *Ham. County, Oct. 1st*, 1857, *ss:*

I, Donn Piatt, one of the sureties on the within bond, do depose and say that I am worth, in unincumbered property, thirty thousand dollars and upwards, after the payment of my just debts and liabilities.

DONN PIATT.

Sworn to and subscribed before me the day and year above
8 written.

RICHARD HILL,
Notary Public.

STATE OF OHIO, *Ham. County, ss, Oct.* 1, 1857:

I, H. McGlincey, one of the sureties on the within bond, do depose and say that I am worth, in unincumbered property, twenty thousand dollars and upwards, after the payment of my just debts and liabilities.

H. McGLINCEY.

Sworn to and subscribed before me the day and year above written.

RICHARD HILL,
Notary Public.

STATE OF OHIO, *Hamilton County, October first*, 1857, *ss:*

I, J. L. Vattier, one of the sureties on the within bond, do depose and say that I am worth, in unincumbered property, twenty thousand dollars and upwards, after the payment of my just debts and liabilities.

J. L. VATTIER.

Sworn to and subscribed before me the day and year above written.

RICHARD HILL,
Notary Public.

STATE OF OHIO, *Hamilton County, October first*, 1857, *ss:*

I, John W. Garrison, one of the sureties on the within bond, do depose and say that I am worth, in unincumbered property, twenty thousand dollars and upwards, after the payment of my just debts and liabilities.

J. W. GARRISON.

Sworn to and subscribed before me the day and year above written.

RICHARD HILL,
Notary Public.

STATE OF OHIO, *Hamilton County, October first*, 1857, *ss:*

I, Mahlon H. Medary, one of the sureties on the within bond, do depose and say that I am worth, in unincumbered property, thirty-five thousand dollars and upwards, after the payment of my just debts & liabilities.

M. H. MEDARY.

Sworn to and subscribed before me the day and year above written.

RICHARD HILL,
Notary Public.

STATE OF OHIO, *Hamilton County, October first*, 1857, *ss:*

I, John Lowden, one of the sureties on the within bond, do depose and say that I am worth, in unincumbered property, fifty thousand dollars and upwards, after the payment of my just debts and liabilities.

JOHN LOWDEN.

Sworn to and subscribed before me the day an dyear above written.

RICHARD HILL, { NOTARIAL SEAL, }
Notary Public. { HAMILTON CO., O. }

9 And afterwards, to wit, on the twenty-fifth day of April, in the year last aforesaid, an entry was made upon the journal of said court in the words and figures following, to wit:

Entry L, p. 481.

On motion to the court by defendants' attorney, the default for plea herein is hereby set aside, and said defendant has leave to file his plea herein within ten days.

And afterwards, to wit, on the second day of May, in the year last aforesaid, came the defendants, by their attorneys, and filed their pleas herein, which is in the words and figures following, to wit:

Plea.

Circuit court of the United States, seventh circuit and southern district of Ohio.

THE UNITED STATES OF AMERICA
vs.
JOEL C. GREEN, DONN PIATT, HUGH MCGLINCEY, John L. Vattier, John W. Garrison, Lafayette La Boiteaux, Mahlon H. Medary, impleaded with John Louden.

1st. And the said Hugh McGlincey, John L. Vattier, John W. Garrison, Mahlon H. Medary, and Donn Piatt, above named defendants, by Charles Fox and P. Mallon, their attorneys, come and defend the wrong and injury when, &c., and say that the said supposed writing obligatory is not their bond, and of this they put themselves upon the country; and the said plaintiff doth the like, &c.

2d. And for a further plea the defendants say they ought not to be charged with the said debt by virtue of the said supposed writing obligatory, because they say that the said supposed writing obligatory was obtained from them by persons acting on behalf of the plaintiff, and others in collusion with them, by fraud, covin, and misrepresentation; and this these defendants are ready to verify. Wherefore they pray judgment, if they ought to be charged with said debt by virtue of said supposed writing obligatory or bond.

3d. And for a further plea these defendants say they ought not to be charged with the said debt by virtue of the said supposed writing obligatory, because they say that the said supposed writing obligatory was obtained from them by the agents of the plaintiff, and others
10 in collusion with said agents, by false and fraudulent representations, to wit: That before the execution of said supposed writing obligatory, and before the same was filled up with the name of the obligors, and when the said writing was in blank as to the names of the obligors, the said agents of the plaintiff, and others in collusion with them, represented and stated to these defendants, to induce them to sign said writing obligatory, that the said blanks were to be filled up with the name of E. M. Shield, Moses Swazey, James Wise, and S. B. W. McLean, and that said Shield, Swazey, Wise, and McLean were to be joint obligors with these defendants in said bond, and that said Shields, Swazey, Wise, and McLean were to sign and seal said bond after these defendants had signed it; and upon the faith of these representations the said defendants signed their names upon said writing obligatory not then filled up, and that without such assurance that said Shields, Swazey, Wise, and McLean were to be obligors in said bonds these defendants would not have assented to place their names upon said writing on blank bonds. And these defendants say that said Shield, Swazey, Wise, and McLean did not sign or seal said bond; did not become parties thereto, but, on the contrary, the said agents of the plaintiff, and them in collusion with them, after the signatures of these defendants were thus procured as aforesaid, filled up the blanks in said writing with other and different names, and made it a writing obligatory, differing altogether from the obligation signed by these defendants, and differing from the obligation these defendants agreed to sign. And this the defendants are ready to verify. Wherefore they pray judgments,

if they ought to be charged with said debt by virtue of the said supposed writing obligatory or bond.

4th. And for a further plea these defendants say that they
11 ought not to be charged with the said debt by virtue of the said supposed writing obligatory, because they say that the laws, rules, and regulations of the Treasury Department, in force at the time said supposed writing obligatory was signed, for the safety and security of both the plaintiff and these defendants required that the agent for paying pensioners, Joel C. Green, should keep his moneys with the collector of customs at Cincinnati; that he, said agent, and said collectors of customs, should report at least quarterly to the department at Washington their disbursements and the amount of moneys on hand, and said collectors should report also on whose account he held deposits, and the amount thereof; that without the knowledge of these defendants, but with the knowledge of the agents of plaintiff and the proper officers of the department, the said Green did not keep his moneys with the collectors of customs at Cincinnati; that he did not so report to the department aforesaid, nor did the collector of customs so report to the proper department; and that if any defalcation did occur on the part and behalf of said Joel C. Green, agent for paying pensioners, said default occurred through the carelessness, inattention, and illegal conduct and mismanagement of the agents of the department aforesaid, the agents and officers of the plaintiff; and this the defendants are ready to verify. Wherefore they pray judgments if they ought to be charged with said debt by virtue of said supposed writing obligatory.

5th. And for a further plea these defendants say that they ought not to be charged with said debt by virtue of said supposed writing obligatory, because they say that the laws of the United States, the rules and regulations of the Treasury Department, in force at the time said supposed writing obligatory was signed, for the safety and security of both plaintiff and defendants, imposed the duty upon the officers and agents
12 of the plaintiff and the Treasury Department that they should quarterly ascertain the amount of moneys on hand, where deposited, and the amount of disbursements made by the agent, Joel C. Green, and required him to keep his deposits with the U. States depository at Cincinnati, all which they, said agents and officers of the plaintiff, without the knowledge of these defendants, refused and neglected to do, to the injury of these defendants; and that if any defalcation has occurred in the accounts of said Green with said department, the same is by reason of the default and illegal and wrongful acts of said agents and officers of the plaintiff failing to perform the duties required of them by law and the rules and regulations in the premises under which said supposed writing obligatory was signed; and this the defendants are ready to verify. Wherefore they pray judgment if they ought to be charged with said debt by virtue of the said writing obligatory.

6th. Notice of special matter.—The plaintiff will take notice that the defendants, on the trial of the cause, will give in evidence, and insist by way of defence to said action on said bond, and in bar of said action, that the amount due from Joel C. Green, under said bond, is much less than $9,000, and that these defendants are not liable upon said bond to a greater amount than was received by said Joel C. Green from the plaintiff after said bond was given; that they are not liable for "forfeited commissions" claimed upon said bonds; that said bond was never executed by them; that said bond was altered after its execution, so as to be a fraud upon these defendants; that said writing declared upon is

not their bond; that said writing obligatory has never been approved and accepted and acted upon by the proper authorities as a valid and accepted bond as required by law; that said Joel C. Green is not
13 a defaulter so as to make these defendants responsible according to the true intent of said bond; that the default of said Joel C. Green, if any has occurred, has been through the fault, carelessness, and improper conduct of the agent of the plaintiff; that said Joel C. Green's account with the government here never been stated by the proper authorities, as required by the terms of said bond, and that the agents of the plaintiff, unknown to these defendants, allowed said Joel C. Green to deposit the money of the plaintiff in private banks, instead of with the United States depository at Cincinnati, as required by law; that said plaintiff knew, long before any default occurred, that said Green did not keep his money with the collectors of customs in Cincinnati; that said Green did not so report monthly, as required by law; that said collectors did not so report quarterly, as required by law; and that the plaintiff has allowed said Green, and assented to said Green's violation of the law, in the whole management and conduct of his pension agency business; and that if any default has occurred, it is in consequence of the carelessness and illegal conduct of the plaintiff's agent and their illegal proceedings in the premises; all which will be given in evidence upon the trial in bar of the plaintiff's action.

CHARLES FOX AND P. MALLON,
Att'ys for the said Defendants.

And afterwards, to wit, on the twenty-seventh day of May, in the year last aforesaid, came the defendants, by their attorneys, and filed their additional plea herein, which is in the words and figures following, to wit:

Additional plea.

Circuit court of the United States, seventh circuit and southern district of Ohio.

THE UNITED STATES OF AMERICA *vs.* JOEL C. GREEN, DONN PIATT, HUGH McGLINCEY, JOHN L. VATTIER, JOHN W. GARRISON, LAFAYETTE LABOITEAUX, and MAHLON H. MEDARY, impleaded with JOHN LOWDEN.	In debt.

And the said Hugh McGlincey, John L. Vattier, John W. Garrison, Mahlon H. Medary, and Donn Piatt, above-named defendants, by
14 Charles Fox and P. Mallon, their attorneys, for further plea by leave of the court, first had and obtained, say they ought not to be charged with said debt by virtue of the said supposed writing obligatory; because, they say that the said writing in the said declaration mentioned was signed by the said defendants on the first day of October, eighteen hundred and fifty-seven aforesaid, for the purpose and with the intent that these defendants, together with E. M. Shield, Moses Swazey, and James Wise, should become surety for the faithful discharge, by Joel C. Green, of his duties as agent for paying pensions at Cincinnati; that the signatures of these defendants were obtained to said paper writing when the same was in blank as to the obligors, and by the representations and procuration of the agents of the plaintiff,

others in collusion with them, and parties having the possession of said paper writing, for the purpose of procuring the sureties thereto and thereon, these defendants signed said paper writing in blank, with the assurance and upon the condition that E.M. Shield, Moses Swazey, and James Wise were to become joint obligors with the defendants upon said supposed writing obligatory; and that these defendants signed their names to said supposed writing obligatory upon said conditions, and left the same in the possession of the agents of the plaintiff and the parties procuring the sureties to said bond, upon the agreement and understanding and condition that said paper writing was to be retained by them until said Swazey, Shield, and Wise executed the same, and not to be delivered as a writing obligatory until the same was so executed by said Shield, Swazey, and Wise; and that the said writing obligatory was not to stand or to be in force against these defendants until so signed by said Shields, Wise, and Swazey; and these defendants say that said paper writing so signed by them in blank was not afterwards at any time signed by said Shields, Swazey, or Wise, but that contrary to the agreement made with these defendants and contrary to the conditions upon which they placed their names upon said blank bond, the agents of the plaintiffs, the parties having possession of said paper, and with whom the same was left as an escrow as aforesaid, caused said paper writing so signed in blank by these defendants to be signed by other and different parties, and the same never was signed by either Shields, Swazey, or Wise, whereby the said writing of these defendants, so signed and delivered upon the conditions aforesaid, became and was wholly discharged, annuled, and vacated; and so these defendants say the said supposed writing obligatory is not their deed; and of this they put themselves upon the country, &c.

C. FOX,
P. MALLON, *Att'ys.*

And afterwards, to wit, on the ninth day of October, in the year last aforesaid, came the U. S. Attorney and filed on behalf of plaintiffs their demurrer herein, which is in the words and figures following, to wit:

Demurrer.

And now come the plaintiffs and say that the second, third, fourth, fifth, and sixth pleas of the said Hugh McGlincey, Donn Piatt, John L. Vattier, John W. Garrison, & Mahlon H. Medary, in manner and form pleaded, are not sufficient in law to bar the plaintiffs of their aforesaid action against them, and that they are not bound by law to answer the same, and this they are ready to verify; wherefore they pray judgment and their debt, and also their damages aforesaid to be adjudged to them.

And for special causes of demurrer they show to the court:

1st. That said several pleas are not nor is either of them verified by the oath or affirmation of the defendants, or either of them.

2d. That it is not stated in said second plea who were the agents of the plaintiffs who made the false and fraudulent representations as therein alleged, nor in what the alleged false and fraudulent representations consisted.

3d. That the names of the agents of the plaintiffs charged in said third plea with making the false and fraudulent representations therein set forth, are not stated, nor are the "other and different names" set forth which are alleged to have been inserted in said bond.

4th. That the names of the agents of the plaintiffs alleged in

said fourth plea, to have had knowledge of the said Joel C. Green's neglect to keep his money with the designated depository at Cincinnati, are not therein set forth, and because the several matters set forth in said fourth plea are immaterial and irrevalent to said issue as joined.

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5th. That the matters and things set forth in said fifth plea are irrevalent, immaterial, and redundant.

6th. That it does not appear in and by the sixth plea who were the agents of the plaintiffs alleged as having acted in collusion with said obligors in the obtaining of said bond.

7th. That a bond cannot in law be delivered as an escrow by the obligors to the obligeen therein or to their agents, as set forth in said sixth plea.

8th. Because said sixth plea contains matters repugnant, inconsistent, and immaterial.

F. BALL,
U. S. Attorney for South'n Dist. of Ohio.

And afterwards, to wit, on the twentieth day of October, in the year last aforesaid, an entry was made upon the journal of said court in the words and figures following, to wit:

Entry J. M., p. 42.

This cause came on for hearing on the demurrer of the plaintiffs to the pleas of the defendants, Hugh McGlincey, John L. Vattier, John W. Garrison, Mahlon H. Medary, & Donn Piatt as secondly, thirdly, fourthly, fifthly, and sixthly above pleaded, and was argued by counsel, and the court having considered the same, do find that said demurrer is well taken; it is therefore considered that said second, third, fourth, fifth, and sixth pleas respectively be and the same are hereby overruled. And leave is granted to the plaintiffs to amend their declaration, which is accordingly done; and leave is granted to the said defendants, Hugh McGlincey, John L. Vattier, John W. Garrison, Mahlon H. Medary, & Donn Piatt to plead further to said declaration within ten days.

And afterwards, to wit, but on the same day and year last aforesaid, an entry was made upon the journal of said court in the words and figures following, to wit:

Entry J. M., p. 42.

This cause came on for hearing on the motion of the plaintiffs to strike out the notice of special matter of the defendants, Hugh McGlincey, John L. Vattier, John W. Garrison, Mahlon H. Medary, & Donn Piatt, annexed to their pleas, for the reasons on file, and was argued by counsel; whereupon, on consideration, the court do sustain said motion; therefore it is ordered that said notice be and the same is stricken out for insufficiency.

17

And afterwards, to wit, on the twenty-fifth day of November, in the year last aforesaid, came Donn Piatt, by his attorneys, and filed in the clerk's office of said court his separate plea, which said plea is in the words and figures following, to wit:

Plea of D. Piatt.

And for a further plea, the said defendant Donn Piatt says that he ought not to be charged with the said debt by virtue of the said supposed writing obligatory, because he says that he signed and sealed said writing while the same was in blank as to the names of the obligors; that the names of the obligors where not then inserted in said supposed writing obligatory, and that this said defendant signed the same at the request of Joel C. Green, upon the assurance and agreement that the said supposed writing obligatory should also be signed and sealed by the following-named parties, as joint obligors with the defendant, viz: E. M. Shields and Moses Swazey, and that the same should not be delivered as a bond until the same was signed and sealed by said Shields and Swazey, so named as aforesaid. This defendant says the names of said Shields and Swazey were not, nor were either of them, obtained to said supposed writing obligatory, and that the defendant would not have signed said supposed writing obligatory without being assured, and upon the condition that the signatures of said Shields and Swazey should be obtained to and placed upon said bond or supposed writing obligatory, as joint obligors, before the same was delivered as a valid bond; and this [this] defendant is ready to verify. Wherefore he prays judgment if he ought to be charged with said debt by virtue of said supposed writing obligatory. And for a further plea, this defendant says he ought not to be charged with said
18 debt by virtue of said supposed writing obligatory, because he says that said supposed writing obligatory was by this defendant signed while the same was in blank as to the names of the obligors, upon the condition that E. M. Shield and Moses Swazey should also sign the same as joint obligors with this defendant, and that said supposed writing obligatory thus signed was left with said Joel C. Green as an escrow to be by him delivered to the plaintiffs in case the same was afterwards so executed by E. M. Shields and Moses Swazey, and not otherwise; that said Shields and Swazey never did sign said supposed writing obligatory, and the same never was delivered as a valid bond of this defendant, whereby the said writing of this defendant so signed upon the condition aforesaid, became and was wholly annuled and vacated; and so this defendant says said supposed writing obligatory is not his deed, and of this he puts himself upon the country, &c.

C. FOX AND P. MALLON,
Atty's for Def't.

And afterwards, to wit, on the same day and year last aforesaid, came Hugh McGlincey, by his attorneys, and filed in the clerk's office of said court his seperate plea which said plea is in the words and figures following, to wit:

Plea of H. McGlincey.

And for a further plea, the said defendant Hugh McGlincey says that he ought not to be charged with said debt by virtue of the said supposed writings obligatory, because he says that he signed and sealed said writing obligatory while the same was in blank as to the names of the obligors; that the names of the obligors were not then inserted in said supposed writing obligatory, and that the defendant signed the same at the request of Joel C. Green and Donn Piatt, upon the assurance and understanding and agreement that the said supposed writing ob-

ligatory should also be signed and sealed by the following-named parties as joint obligors with this defendant, viz: E. M. Shields, Moses Swazey, James Wise, and S. B. W. McLean, and that the same should not be delivered as a bond until the same was signed and sealed
19 by said Shields, Swazey, Wise, and McLean, so named as aforesaid. This defendant further says, the names of Shields, Swazey, Wise, and McLean were not, nor either of them, obtained to said supposed writing obligatory; and that this defendant would not have signed said supposed writing obligatory without being assured and upon the condition that the signatures of said Shields, Swazey, Wise, and McLean should be obtained to and placed upon said said supposed writing obligatory as joint obligors before the same was delivered as a valid bond; and this this defendant is ready to verify; wherefore he prays judgment if he ought to be charged with said debt by virtue of said supposed writing obligatory. And for a further plea, this defendant says he ought not to be charged with said debt by virtue of said supposed writing obligatory, because he says that said supposed writing obligatory was by this defendant signed when the same was in blank as to the names of the obligors, upon the condition that E. M. Shields, Moses Swazey, James Wise, and S. B. W. McLean should also sign the same as joint obligors, and that said supposed writing obligatory thus signed was left with one Donn Piatt as an escrow, to be by him delivered to the plaintiff's agent, in case the same was afterwards so executed by E. M. Shields, M. Swazey, James Wise, and S. B. W. McLean, and not otherwise; that said Shields, Swazey, Wise, and McLean never did sign said supposed writing obligatory, and the same never was delivered as a valid bond of this defendant, whereby the said writing of this defendant, so signed upon the condition aforesaid, became and was wholly annuled and vacated and so this defendant says said supposed writing obligatory is not his deed; and of this he puts himself upon the country, &c.

CHARLES FOX AND P. MALLON,
Atty's for Def't.

And afterwards, to wit, on the same day and year last aforesaid, came J. L. Vattier, by his attorneys, and filed in the clerk's office of said court his separate plea, which said plea is in the words and figures fol-
20 lowing, to wit:

Plea of J. L. Vattier.

And for a further plea, the said John L. Vattier says that he ought not to be charged with the said debt by virtue of the said supposed writing obligatory, because he says that he signed and sealed said writing obligatory while the same was in blank as to the names of the obligors, and that the names of the obligors was not then inserted in said supposed writing obligatory, and that this defendant signed the same at the request of Donn Piatt, upon the assurance and understanding and agreement that the said supposed writing obligatory should also be signed and sealed by the following-named parties, as joint obligors with this defendant, viz: E. M. Shields and James Wise; and that said writing should not be delivered as a bond until the same was signed and sealed by said Shields and Wise, so named as aforesaid. This defendant further says, that the names of Shields and Wise, nor either of them, were obtained to said writing, and this defendant would not have signed said supposed writing obligatory without being assured, and upon the

condition that the signatures of said Shields and Wise should be obtained to and placed upon said supposed writing obligatory, as joint obligors, before the same was delivered as a valid bond; and this the defendant is ready to verify; whereupon he prays judgment if he ought to be charged with said debt by virtue of said supposed writing obligatory. And for a further plea, this defendant says he ought not to be charged with said debt by virtue of said supposed writing obligatory, because he says that said supposed writing obligatory was by this defendant signed and sealed when the same was in blank as to the names of the obligor, upon the condition that E. M. Shields and James Wise should afterwards also sign the same as joint obligors, and that the said supposed writing obligatory, thus signed by this defendant only, was left with one Donn Piatt as an escrow, to be by him delivered to the plaintiff's agent in case the same was
21 afterwards so executed by said Shields and Wise, and not otherwise; that said Shields and Wise never did sign said supposed writing obligatory, and the same never was delivered as a valid bond of this defendant; whereby the said writing of this defendant, so signed upon the condition aforesaid, became and was wholly annuled and vacated; and so this defendant says said supposed writing obligatory is not his deed; and of this he puts himself upon the country, &c.

CHARLES FOX AND P. MALLON, *Att'ys*

And afterwards, to wit, on the same day and year last aforesaid, J. W. Garrison, by his attorneys, and filed in the clerk's office of said court his seperate plea, which said plea is in the words and figures following, to wit:

Plea of J. W. Garrison.

And for a further plea the said defendant, John W. Garrison, says that he ought not to be charged with the said debt by virtue of the said supposed writing obligatory, because he says he signed and sealed said writing while the same was in blank as to the names of the obligors, and when the same was signed by Green, Piatt, McGlincey, and Vattier, and that this defendant signed the same at the request of said Green, upon the assurance and understanding and agreement that the said supposed writing obligatory should also be signed and sealed by the following-named parties as joint obligors in said bond with this defendant, viz: John Swasey and E. M. Shields, and that the same should not be delivered as a bond until the same was signed and sealed by said Swasey and Shields so named as aforesaid. This defendant further says that the names of Swazey and Shields were not, nor were either of them, obtained to said supposed writing obligatory; and that this defendant would not have signed said supposed writing obligatory without being assured and upon the condition that the signatures of said Shields and Swazey should be obtained to and placed upon said supposed writing obligatory as joint obligors, before the same was delivered as a
22 valid bond. And this this defendant is ready to verify. Wherefore he prays judgment, if he ought to be charged with said debt by virtue of said supposed writing obligatory.

And for a further plea this defendant says he ought not to be charged with said debt by virtue of said supposed writing obligatory, because he says that said supposed writing obligatory was by this defendant signed when the same was in blank as to the names of the obligors, and when said writing had been signed only by Green, Piatt, McGlincey, and

Vattier, upon the condition that John Swasey and E. M. Shield should also sign the same afterwards as joint obligors with this defendant, and that said supposed writing obligatory thus signed was left with said Joel C. Green as an escrow to be by him delivered to the plaintiffs in case the same was afterwards so executed by John Swazey and E. M. Shields, and not otherwise; that said Swazey and Shields never did sign said supposed writing obligatory, and the same never was delivered as a valid bond of this defendant; whereby the said writing of this defendant so signed, upon the condition aforesaid, became and was wholly annulled and vacated and so this defendant says said supposed writing obligatory is not his deed; and of this he puts himself upon the country, &c.

CHARLES FOX & P. MALLON,
Att'ys for Deft.

And afterwards, to wit, on the day and year last aforesaid came M. H. Medary, by his attorneys, and filed in the clerk's office of said court his separate plea; which said plea is in the words and figures following, to wit:

Plea of M. H. Medary.

And for a further plea the said defendant, Mahlon H. Medary, says that he ought not to be charged with the said debt by virtue of the said supposed writing obligatory, because he says he signed and sealed said writing while the same was in blank as to the names of the obligors; that the names of the obligors was not then inserted in said bond, but the same had been signed by some five of the obligors, and that
23 this defendant signed the same at the request of said Green and Donn Piatt, upon the assurance and understanding and agreement that the said supposed writing obligatory should also be signed and sealed by the following-named persons as joint obligors with this defendant, viz: E. M. Shields and John Swazey; and that the same should not be delivered as a bond until the same was signed and sealed by said Shields and Swazey so named as aforesaid. This defendant further says that the names of Shields and Swazey were not, nor were either of them, obtained to said supposed writing obligatory; and that this defendant would not have signed said supposed writing obligatory without being assured, and upon the condition that the signatures of said Shields and Swazey should be obtained to and placed upon said bond as joint obligors before the same was delivered as a valid bond. And this this defendant is ready to verify. Wherefore he prays judgement, if he ought to be charged with said debt by virtue of said supposed writing obligatory.

And for a further plea this defendant says he ought not to be charged with said debt by virtue of said supposed writing obligatory, because he says that said supposed writing obligatory was by this defendant signed when the same was in blank as to the names of the obligors, and when the same had been signed by only five of the obligors, viz: Green, McGlincey, Piatt, Vattier, and Garrison, upon the condition that E. M. Shields and John Swazey should also sign the same as joint obligors with this defendant; and that said supposed writing obligatory thus signed was left with said Joel C. Green as an escrow to be by him delivered to the plaintiffs' agent, in case the same was afterwards so executed by said Shields and Swazey, and not otherwise. That said Shields and Swazey never did sign said supposed writing obligatory, and the

same never was delivered as a valid bond by this defendant; whereby the said writing by this defendant, so signed upon the condition
24 aforesaid, became and was wholly annulled and vacated; and so this defendant says said supposed writing obligatory is not his deed; and of this he puts himself upon the country, &c.

CHARLES FOX AND P. MALLON,
Att'ys for Deft.

And afterwards, to wit, on the first day of June, in the year of our Lord one thousand eight hundred and sixty-four, an entry was made upon the journal of said court in the words and figures following, to wit:

Entry M., p. 206.

On motion it is by the court here ordered that this cause stand continued until the next October term.

And afterwards, to wit, on the third day of October, in the year last aforesaid came the plaintiffs by their attorney, and filed their demurrer to first special plea of J. W. Garrison; which said demurrer is in the words and figures following, to wit:

Demurrer.

And the plaintiffs say that the matters & things by the said J. W. Garrison above pleaded in his first special plea in manner & form, as the same are therein pleaded, are not sufficient in law to bar the plaintiffs' claim in their declaration aforesaid alleged, & that they are not bound in law to answer the same, & this they are ready to verify. Wherefore they pray judgment, & their debt aforesaid with their damages to be adjudged, &c.

By F. BALL, *Att'y U. S.*

And afterwards, to wit, but on the same day and year last aforesaid, came the plaintiffs by their attorney, and filed their demurrer to second special plea of said J. W. Garrison; which said demurrer is in the words and figures following, to wit:

Demurrer.

And the plaintiffs say that the matters & things by the said J. W. Garrison above pleaded in his second special plea in manner & form, as the same are therein pleaded, are not sufficient in law to bar the plaintiffs' claim in this declaration aforesaid alleged, & that they are not bound in law to answer the same, & this they are ready to verify. Wherefore they pray judgment, & their debt aforesaid with their damages to be adjudged.

By F. BALL, *Att'y U. S.*

And afterwards, to wit, but on the same day and year last
25 aforesaid, came the plaintiffs by their attorney, and filed their demurrer to first special plea of the said M. H. Medary; which said demurrer is in the words and figures following, to wit:

Demurrer.

And the plaintiffs say that the matters & things by the said M. H. Medary above pleaded in his first special plea, in manner & form as the same are therein pleaded, are not sufficient in law to bar the plaintiffs' claim in their declaration aforesaid alleged, & that they are not bound in law to answer the same, & this they are ready to verify. Wherefore they pray judgment, & their debt aforesaid with their damages to be adjudged.

By F. BALL, *Att'y U. S.*

And afterwards, to wit, but on the same day and year last aforesaid, came the plaintiffs by their attorney and filed their demurrer to second special plea of the said M. H. Medary; which said demurrer is in the words and figures following, to wit:

Demurrer.

And the plaintiffs say that the matters things & by the said M. H. Medary above pleaded in his second special plea, in manner & form as the same are therein pleaded, are not sufficient in law to bar the plaintiffs' claim in their declaration aforesaid alleged; & that they are not bound in law to answer the same, & this they are ready to verify. Wherefore they pray judgment, & their debt aforesaid with the damages to be adjudged.

By F. BALL, *Att'y U. S.*

And afterwards, to wit, but on the same day and year last afforesaid, came the plaintiffs by their attorney, and filed their demurrer to first special plea of the said Donn Piatt; which said demurrer is in the words and figures following, to wit:

Demurrer.

And the plaintiffs say that the matters & things by the said Donn Piatt above pleaded in his first special plea, in manner & form as the same are therein pleaded, are not sufficient in law to bar the plaintiffs' claim in their declaration aforesaid alleged; & that they are not bound in law to answer the same, & this they are ready to verify. Wherefore they pray judgment, & their debt aforesaid with their damages to be adjudged, &c.

By F. BALL, *Att'y U. S.*

26 And afterwards, to wit, but on the same day and year last aforesaid, came the plaintiffs by their attorney, and filed their demurrer to second special plea of the said Donn Piatt; which said demurrer is in the words and figures following, to wit:

Demurrer.

And the plaintiffs say that the matters & things by the said Donn Piatt above pleaded in his second special plea, in manner & form as the same are therein pleaded, are not sufficient in law to bar the plaintiffs' claim in their declaration aforesaid alleged; & that they are not bound in law to answer the same, & this they are ready to verify. Wherefore they pray judgment, & their debt aforesaid with their damages to be adjudged, &c.

By F. BALL, *Att'y U. S.*

And afterwards, to wit, but on the same day and year last aforesaid, came the plaintiffs by their attorney, and filed their demurrer to 1st special plea of the said Hugh McGlincey; which said demurrer is in the words and figures following, to wit:

Demurrer.

And the plaintiffs say that the matters & things by the said Hugh McGlincey above pleaded in his first special plea, in manner & form as the same are therein pleaded, are not sufficient in law to bar the plaintiffs' claim in their declaration aforesaid alleged; & that they are not bound in law to answer the same, & this they are ready to verify. Wherefore they pray judgment, & their debt aforesaid with their damages to be adjudged, &c.

By F. BALL, *Att'y U. S.*

And afterwards, to wit, but on the same day & year last aforesaid, came the plaintiffs by their attorney, & filed their demurrer to second special plea of the said Hugh McGlincey; which said demurrer is in the words and figures following, to wit:

Demurrer.

And the plaintiffs say that the matters and things by the said Hugh McGlincey above pleaded in his second special plea, in manner & form as the same are therein pleaded, are not sufficient in law to bar the plaintiffs' claim in their declaration aforesaid alleged; & that they are not bound in law to answer the same, & this they are ready to
27 verify. Wherefore they pray judgment, & their debt aforesaid with their damages to be adjudged, &c.

By F. BALL, *Att'y U. S.*

And afterwards, to wit, but on the same day and year last aforesaid, came the plaintiffs by their attorney and filed their demurrer to first special plea of the said John L. Vattier; which said demurrer is in the words and figures following, to wit:

Demurrer.

And the plaintiffs say that the matters & things by the said John L. Vattier above pleaded in his first special plea, in manner & form as the same are therein pleaded, are not sufficient in law to bar the plaintiffs' claim in their declaration aforesaid alleged; & that they are not bound in law to answer the same, and this they are ready to verify. Wherefore they pray judgment, and their debt aforesaid with their damages to be adjudged, &c.

By F. BALL, *Att'y U. S.*

And afterwards, to wit, but on the same day and year last aforesaid, came the plaintiffs by their attorney, and filed their demurrer to second special plea of the said John L. Vattier; which said demurrer is in words and figures following, to wit:

Demurrer.

And the plaintiffs say that the matters & things by the said John L. Vattier above pleaded in his second special plea, in manner & form as the same are therein pleaded, are not sufficient in law to bar the

plaintiffs' claim in their declaration aforesaid alleged; & that they are not bound in law to answer the same, and this they are ready to verify. Wherefore they pray judgment, & their debt aforesaid & their damages to be adjudged, &c.

By F. BALL, *Att'y U. S.*

And afterwards, to wit, on the twenty-ninth day of November, in the year last aforesaid, an entry was made upon the journal of said court in the words and figures following, to wit:

Entry Jour. M., 302.

This cause came on to be heard upon the demurrer of defendants to the declaration of the plaintiffs herein, and was argued by counsel and submitted; and the court take the same under advisement.

And afterwards, to wit, on the twenty-seventh day of June, in
28 the year of our Lord one thousand eight hundred and sixty-five, an entry was made upon the journal of said court in the words and figures following, to wit:

Entry Jour. M., 415.

On motion to the court, it is ordered that the default herein be and the same hereby is set aside, and defendants have leave to plead herein within ten days.

And afterwards, to wit, on the twenty-ninth day of June, in the year last aforesaid, an entry was made upon the journal of said court in the words and figures following, to wit:

Entry Jour. M., 416.

On motion to the court, it is ordered that the default herein be and the same hereby is set aside, and that defendants have leave to file their plea in this cause within twenty days from the entry hereof.

And afterwards, to wit, on the twenty-eighth day of April, in the year of our Lord one thousand eight hundred and sixty-six, an entry was made upon the journal of said court in the words and figures following, to wit:

Entry Jour. N., 2.

This cause came on to be further heard upon the demurrers of the plaintiffs to the seperate pleas of Hugh McGlincey, John L. Vattier, John W. Garrison, Mahlon H. Medary, and Donn Piatt, filed upon the 25th of Nov'r, 1863, and was argued by counsel; and the court being advised in the premises, find that said demurrers are not well taken, and do overrule the same, and leave is given the plaintiffs to file replication within thirty days.

And afterwards, to wit, on the nineteenth day of May, in the year last aforesaid, came the plaintiffs by their attorney, and filed their replication to the plea of John W. Garrison; which said replication is in the words and figures following, to wit:

Replication to plea of J. W. Garrison.

And plaintiffs for reply to said special plea of said John W. Garrison say that said John W. Garrison did not sign said writing obligatory while the same was in blank as to the names of the obligors, and denies that the names of the obligors were not then inserted in said writing obligatory, but on the contrary thereof plaintiffs say that when the same was signed and sealed and delivered to plaintiffs, it was full and com-
29 plete, and in every respect was a valid and legal obligation binding alike on each and every one of the parties whose names are therein and thereto written and sealed.

Plaintiffs also deny that there was any legal subsisting agreement at the time said writing obligatory was signed, sealed, and delivered to plaintiffs and affecting plaintiffs' right to recover in this case, whereby said Green was to obtain thereto the signatures of said John Swasey and E. M. Shields, but on the contrary thereof the same was signed, sealed, and delivered on the day of its date by all of the obligors thereof at the same time as a joint act, well knowing that there was no other person or persons to sign the same.

And plaintiffs further say that when the defendants signed, sealed, and delivered said writing obligatory to plaintiffs, they did not disclose to plaintiffs or their agents that any other person or persons were to execute said writing obligatory besides said defendants, and did not give plaintiffs or their agents any notice that said writing obligatory was not complete, but on the contrary thereof said defendants signed, sealed, and delivered said writing obligatory to plaintiffs as a full and complete obligation legally binding alike on all of said defendants, and thus induced said plaintiffs to accept the same as the act of said defendants. Wherefore plaintiffs ask judgment, &c.

R. M. CORWINE, *U. S. Atty.*

And afterwards, to wit, but on the same day and in the year last aforesaid, came the plaintiffs by their attorney, and filed their replication to the plea of John L. Vattier; which said replication is in the words and figures following, to wit:

Replication to plea of Jno. L. Vattier.

And plaintiffs for reply to said special pleas of said John L. Vattier say that said John L. Vattier did not sign said writing obligatory while the same was in blank as to the names of the obligors, and denies that the names of the obligors were not then inserted in said writing obligatory, but on the contrary thereof plaintiffs say that when the
30 same was signed and sealed and delivered to plaintiffs, it was full and complete, and in every respect was a valid and legal obligation, binding alike on each and every one of the parties whose names are therein and thereto written and sealed. Plaintiffs also deny that there was any legal, subsisting agreement at the time said writing obligatory was signed, sealed, and delivered to plaintiffs and [and] affecting plaintiffs' right to recover in this case, whereby said Green was to obtain thereto the signatures of said E. M. Shields and James Wise, but on the contrary thereof the same was signed, sealed, and delivered on the day of its date by all of the obligors thereof at the same time as a joint act, well knowing that there was no other person or persons to sign the same. And plaintiffs further say that when the defendants sealed and delivered said writing obligatory to plaintiffs, they did not

disclose to plaintiffs or their agents that any other person or persons were to execute said writing obligatory besides said defendants, and did not give plaintiffs or their agents any notice that said writing obligatory was not complete, but on the contrary thereof said defendants signed, sealed, and delivered said writing obligatory to plaintiffs as a full and complete obligation legally binding alike on all of said defendants, and thus induced said plaintiffs to accept the same as the act of said defendants. Wherefore plaintiffs ask judgment, &c.

R. M. CORWINE, *U. S. Atty.*

And afterwards, to wit, but on the same day and in the year last aforesaid, came the plaintiffs by their attorney, and filed their replication to the plea of Mahlon H. Medary; which said replication is in the words and figures following, to wit:

Replication to plea of M. H. Medary.

And plaintiffs for reply to said special pleas of said Mahlon H. Medary say that said Mahlon H. Medary did not sign said writing obligatory while the same was in blank as to the names of the obligors, and denies that the names of the obligors were not there inserted in
31 said writing obligatory, but on the contrary thereof plaintiffs say that when the same was signed and sealed and delivered to plaintiffs, it was full and complete, and in every respect was a valid and legal obligation, binding alike on each and every one of the parties whose names are therein and thereto written and sealed.

Plaintiffs also deny that there was any legal subsisting agreement at the time said writing obligatory was signed, sealed, and delivered to plaintiffs and affecting plaintiffs' right to recover in this case, whereby said Green was to obtain thereto the signatures of said E. M. Shields and John Swazey, but on the contrary thereof the same was signed, sealed, and delivered on the day of its date by all the obligors thereof, at the same time as a joint act, well knowing that there was no other person or persons to sign the same.

And plaintiffs further say that when the defendants signed, sealed, and delivered said writing obligatory to plaintiffs, they did not disclose to plaintiffs or their agents that any other person or persons were to execute said writing obligatory besides said defendants, and did not give plaintiffs or their agents any notice that said writing obligatory was not complete, but on the contrary thereof said defendants signed, sealed, and delivered said writing obligatory to plaintiffs as a full and complete obligation, legally binding alike on all of said defendants, and thus induced said plaintiffs to accept the same as the act of said defendants. Wherefore plaintiffs pray judgment, &c.

R. M. CORWINE, *U. S. Atty.*

And afterwards, to wit, but on the same day and in the year last aforesaid, came the plaintiffs by their attorney, and filed their replication to the pleas of Donn Piatt; which said replication is in the words and figures following, to wit:

Replication to plea of Donn Piatt.

And plaintiffs for reply to said special pleas of said Donn
32 Piatt say that said Donn Piatt did not sign said writing obligatory while the same was in blank as to the names of the obligors, and denies that the names of the obligors were not then inserted in said

writing obligatory, but on the contrary thereof plaintiffs say that when the same was signed and sealed and delivered to plaintiffs, it was full and complete, and in every respect was a valid and legal obligation, binding alike on each and every one of the parties whose names are therein and thereto written and sealed.

Plaintiffs also deny that there was any legal subsisting agreement at the time said writing obligatory was signed, sealed, and delivered to plaintiffs and affecting plaintiffs' right to recover in this case, whereby said Green was to obtain thereto the signatures of said E. M. Shields and Moses Swasey, but on the contrary thereof the same was signed, sealed, and delivered on the day of its date by all of the obligors thereof, at the same time as a joint act, well knowing that there was no other person or persons to sign the same.

And plaintiffs further say that when the defendants signed, sealed, and delivered said writing obligatory to plaintiffs, they did not disclose to plaintiffs or their agents that any other person or persons were to execute said writing obligatory besides said defendants, and did not give plaintiffs or their agents any notice that said writing obligatory was not complete, but on the contrary thereof said defendants signed, sealed, and delivered said writing obligatory to plaintiffs as a full and complete obligation, legally binding alike on all of said defendants, and thus induced said plaintiffs to accept the same as the act of said defendants. Wherefore plaintiffs pray judgment, &c.

R. M. CORWINE, *U. S. Atty.*

And afterwards to wit, but on the same day and in the year last aforesaid, came the plaintiffs by their attorney, and filed their replication to the pleas of Hugh McGlincey; which said replication is in the words and figures following, to wit:

33 *Replication to pleas of Hugh McGlincey.*

And plaintiffs for reply to said special pleas of said Hugh McGlincey say that said Hugh McGlincey did not sign said writing obligatory while the same was in blank, as to the names of the obligors, and denies that the names of the obligors were not then inserted in said writing obligatory, but on the contrary thereof plaintiffs say that when the same was signed and sealed and delivered to plaintiffs, it was full and complete, and in every respect was a valid and legal obligation, binding alike on each and every one of the parties whose names are therein and thereto written and sealed. Plaintiffs also deny that there was any legal subsisting agreement at the time said writing obligatory was signed, sealed, and delivered to plaintiffs and affecting plaintiffs' right to recover in this case, whereby said Green was to obtain thereto the signatures of said E. M. Shields, Moses Swazey, James Wise, and S. B. W. McLean, but on the contrary thereof the same was signed, sealed, and delivered on the day of its date by all of the obligors thereof, at the same time, as a joint act, well knowing that there was no other person or persons to sign the same. And plaintiffs further say that when the defendants signed, sealed, and delivered said writing obligatory to plaintiffs, they did not disclose to plaintiffs or their agents that any other person or persons were to execute said writing obligatory besides said defendants, and did not give plaintiffs or their agents any notice that said writing obligatory was not complete, but on the contrary thereof said defendants signed, sealed, and delivered said writing obligatory to plaintiffs as a full and complete obligation, legally binding alike on all of said defend-

ants, and thus induced said plaintiffs to accept the same as the act of said defendants. Wherefore plaintiffs ask judgment, &c.

R. M. CORWINE,
U. S. Attorney.

And afterwards, to wit, on the twenty-third day of May, in the
34 year last aforesaid, an entry was made upon the journal of said court, in the words and figures following, to wit:

Entry Jour. N., 14.

In this case the court, upon consideration of the premises and after hearing counsel, overrule the demurrers of the plaintiffs to the special pleas severally herein filed by the defendants Piatt, Vattier, McGlincey, Garrison, and Medary, and give the plaintiffs leave to reply. Whereupon the plaintiffs except to said judgement of said court overruling said demurrers, and this exception is ordered to be made part of the record.

And afterwards, to wit, on the fourteenth day of June, in the year last aforesaid, an entry was made upon the journal of said court, in the words and figures following, to wit:

Entry Jour. N., 31.

This day came the parties by their attorneys, and thereupon came a jury, to wit: George B. Frye, C. W. Gest, D. W. Windfaugh, H. Labold, T. D. Book, Edwin Stebbins, T. Vibbard, Jonathan Stabler, Joseph Sawyer, J. W. Butler, S. W. Ladley, and William Roney, who being empannelled and sworn the truth to speak upon the issue joined between the parties, upon their oaths do say: That the said Joel C. Green, defendant, doth owe to said plaintiffs the sum of five thousand six hundred and seventy-one and 9-100 dollars ($5,671 09) principal, and the sum of three thousand and thirty dollars ($3,030) penalty, in manner and form as said plaintiffs hath complained against him; and they say that the said suretys, Donn Piatt, Hugh McGlincey, John L. Vattier, John W. Garrison, Lafayette La Boiteaux, Mahlon Medary, doth owe to the said plaintiffs the sum of five thousand six hundred and seven ty one 9-100, in manner and form as said plaintiffs hath complained them, and they assess the damages of plaintiffs, by reason of the detention thereof, at the sum of one thousand five hundred and thirty-one 19-100 dollars.

Therefore it is considered that plaintiffs recover of defendant,
35 Joel C. Green, the said sum of five thousand six hundred and seventy-one 9-100 dollars ($5,671 09) principal, and the said sum of $3,030 00 penalty, and the sum of $1,531 19 by reason of the detention thereof; and that plaintiffs recover of said Donn Piatt, Hugh McGlincey, John L. Vattier, John W. Garrison, Lafayette La Boiteaux, Mahlon Medary, the sum of five thousand six hundred and seventy-one 9-100 dollars, ($5,671 09,) and the sum of one thousand five hundred and thirty-one 19-100 dollars, ($1,531 19,) by reason of the detention thereof, and also their costs in this behalf expended, taxed at $; and execution is awarded therefor.

And afterwards, to wit, but on the same day and in the year last aforesaid, came the defendants and filed their bill of exceptions herein; which said bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

Be it remembered that on the trial of this cause, at the June term, 1866, of said circuit court of the United States in the 7th circuit and southern district of Ohio, the plaintiffs, to maintain the issue upon the part of the government, offered in evidence to the court and jury aforesaid the bond counted upon in the declaration; also evidence tending to prove that Joel C. Green was pension agent at Cincinnati, and that he was indebted to the government in a large sum of money, and that the allegations of plaintiff as to the breaches assigned in the declaration were true, and that the defendants had signed and sealed the bond counted upon and vested. And thereupon the defendants, Donn Piatt, Hugh McGlincey, John L. Vattier, John W. Garrison, and Mahlon H. Medary; to maintain the issues on their part, called as a witness Donn Piatt, one of the defendants, each having filed separate pleas, and offered to prove by this witness that the bond counted upon in the declaration and offered in evidence to the jury was never delivered to the plaintiffs; that it was placed in his hands as an escrow, to be delivered to
36 the government upon the signing of said bond by John Swazey and E. Shields; that said Swazey & Shields did not sign said bond, and the same never was delivered by and never was a valid bond as against the defendants Piatt, McGlincey, Garrison, Vattier, and Medary; but the district attorney interposed and objected to the evidence upon the ground that the witness was a party to the action, one of the defendants, and, the government being plaintiffs, could not testify; and upon argument the court sustained the objection, and held the witness incompetent to testify on the grounds stated by the district attorney, and would not permit the defendants to examine said witness, nor to prove to the jury the facts aforesaid by said witness; to which opinion of the court and refusal to permit the witness to testify to said facts, the defendant excepts, and prays his exception to be entered of record.

Thereupon the defendant Donn Piatt, to maintain the issue on his part, called as a witness on his behalf Hugh McGlincey, and by said witness offered to prove to the jury that the bond counted upon and offered in evidence to the jury by the plaintiff was signed by said Donn Piatt and said McGlincey in blank upon the promise and agreement that the bond was to be filled up with the names of John Swazey, John Wise, and E. M. Shields; that said names of Swazey, Wise, and Shields were not put in said bond, nor did said Swazey, Wise, or Shields sign said bond; and it was further agreed when they signed their names to said paper in blank, that the same should not be used or delivered or perfected as a bond without the signatures of said Swazey, Wise, and Shields, and that said bond was to be kept and held as an escrow, to be delivered only upon such conditions and terms being complied with; that said terms and agreement never were complied with, and that said bond never was completed and delivered as agreed upon, and that
37 the defendants never did sign or consent to or make the bond offered in evidence by the plaintiff; but the district attorney interposed and objected to the witness and to the evidence, upon the ground that the witness was a party to the cause, one of the defendants, and, the government being plaintiffs, he could not testify; and upon argument the court sustained the objection and ruled that the defendant nor either of the defendants could testify in this cause, and excluded the witness and refused to let defendants prove said facts to the jury by said witness or by either of the defendants; and thereupon the defendants excepted to said ruling of the court, and prayed their exceptions to be

entered of record, which is allowed. The defendants having no other witness than those named as defendants, the case went to the jury upon the evidence of plaintiffs, who returned a verdict for the plaintiffs, assessing damages at $7,202 28. And thereupon the court entered a judgment against the defendants for the amount of the verdict; to all which ruling, opinions, and proceedings of the court the defendants excepted, and prayed the court to sign and seal this bill of exceptions and make the same a part of the record; all which is done and ordered accordingly.

H. H. LEAVITT. [SEAL.]

And afterwards, to wit, on the seventeenth day of November, in the year of our Lord one thousand eight hundred and sixty-eight, came the defendants herein and filed their error bond, which said appeal bond is in the words and figures following, to wit:

Error bond.

Know all men by these presents, that we, Charles M. Buchanan and W. C. Davis, both of Cincinnati, Hamilton county, Ohio, are held and firmly bound unto the United States of America in the penal sum of five hundred dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated this seventeenth day of November, A. D. 1868.

The condition of the above obligation is such that whereas the
38 said Joel C. Green et al. have obtained an allowance of a writ of error upon a certain judgment rendered in the circuit court of the United States within and for the southern district of Ohio, in favor of the said United States and against said Donn Piatt, Hugh McGlincey, John L. Vattier, Jno. W. Garrison, Lafayette La Boiteaux, & Mahlon H. Medary, et al: Now, if the said Joel C. Green et al. shall pay the condemnation money and costs, in case the said judgment of the said circuit court shall be affirmed by the Supreme Court of the United States, in whole or in part, then the above obligation shall be void, otherwise in full force and effect.

CHAS. M. BUCHANAN. [L. S.]
W. C. DAVIS. [L. S.]

And afterwards, to wit, at the October term of said court, in the year of our Lord one thousand eight hundred and sixty-eight, on motion of Donn Piatt, Hugh McGlincey, John L. Vattier, John W. Garrison, Lafayette La Boiteaux, Mahlon H. Medary, defendants in the above cause, the court allow a writ of error in this case to the Supreme Court of the United States, and approve of Charles M. Buchanan and William C. Davis as sureties on the writ of error bond.

39 The United States of America.—Supreme Court of the United States.

To the United States of America, greeting:

Whereas Donn Piatt, Hugh McGlincy, John L. Vattier, John W. Garrison, Lafayette La Boiteaux, & Mahlon H. Medary have obtained the allowance of our writ of error to the circuit court of the United States of America for the southern district of Ohio directed, to remove into the said Supreme Court to be holden at the city of Washington, on the first Monday in the month of December next, the record of a certain

plaint, process, proceedings, and judgment in an action of debt, wherein the said The United States of America, plaintiffs in that action, lately recovered against the said Donn Piatt, Hugh McGlincey, John L. Vattier, John W. Garrison, Lafayette La Boiteaux, & Mahlon H. Medary a judgment for five thousand six hundred and seventy-one $\frac{9}{100}$ dollars, and the sum of $3,030 00 penalty, and the sum of $1,531 19 by reason of the detention thereof, and costs, as by the said record in the said circuit court remaining appears, in which said record and proceedings and also in the rendition of the judgment thereupon manifest error hath intervened, as by the said Donn Piatt, Hugh McGlincy, John L. Vattier, John W. Garrison, Lafayette La Boiteaux, & Mahlon H. Medary we are informed, and our said writ of error granted, issued, and allowed as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be; you are, therefore, hereby commanded and cited to be and appear before the judges of the said Supreme Court at the city of Washington, at the next term of said court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected and the judgment of our said Supreme Court thereupon.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States of America, this 30th day of November, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States of America the 91st.

[L. S.]

H. H. LEAVITT,
Judge of said Circuit Court.

40 Supreme Court of the United States.

UNITED STATES OF AMERCIA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States of America in and for the southern district of Ohio, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea which is in the said circuit court of the United States before you, between the United States of America and Joel C. Green, Donn Piatt, Hugh McGlincey, John L. Vattier, John W. Garrison, Lafayette La Boiteaux, & Mahlon H. Medary, defendants, a manifest error hath happened to the great damage of the said defendants, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same at the city of Washington on the first Monday in the month of December next, in the said Supreme Court, then and there to be held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this thirtieth day of November, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States of America the 91st.

[SEAL.] Attest:

JOHN McLEAN, *Clerk.*

Service of within writ is hereby acknowledged.
Nov. 21, 1868.

HENRY HOOPER,
Ass't U. S. Att'y South. Dist. of Ohio.

41 THE UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, John McLean, clerk of the circuit court of the United States within and for said district, hereby certify the foregoing transcript to be truly taken and copied from the files and records of said court in the case of the United States vs. Joel C. Green et al. as the same are kept in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Cincinnati, this 21st day of November, A. D. 1868, and in the 93d year of American independence.

[SEAL.] Attest:

JOHN McLEAN, *Clerk.*

To the Supreme Court of the United States:

The said Donn Piatt, Hugh McGlincy, John L. Vattier, John W. Garrison, Lafayette La Boiteaux, and Mahlon Medary, come and say that in the record and proceedings aforesaid and in the judgment aforesaid manifest error appears to their prejudice, and they assign the following causes of errors:

First. Because the court refused to permit the said Donn Piatt, Hugh McGlincy, John L. Vattier, John W. Garrison, Lafayette La Boiteaux, and Mahlon Medary, or either of them, to testify in said cause.

Second. Because judgment was renderered in favour of the pl'ff, the United States of America, when it ought to have been rendered for the defendants.

Third. For other errors in said record appearing, wherefore they pray said judgment may be reversed.

CHARLES FOX,
Att'y for Pl'ff in Error.

Robert Clarke & Co., Printers, 65 West Fourth Street, Cincinnati, O.

United States Supreme Court.

Donn Piatt, Hugh McGlincy, John L. Vattier, John W. Garrison, Lafayette La-Boiteaux, Mahlon H. Medary,

versus

The United States of America.

CHARLES FOX,
Attorney for Plff's in Error.

Robert Clarke & Co., Printers, 65 West Fourth Street, Cincinnati, O.

United States Supreme Court.

Donn Piatt, Hugh McGlincy, John L. Vattier, John W. Garrison, Lafayette La-Boiteaux, Mahlon H. Medary,

versus

The United States of America.

THE United States sued Joel Green and his sureties, on a bond claimed to have been executed by them and John Louder, returned not found, to the United States, bearing date the 1st October, 1857, for $100,000.00. In this bond it is recited, Joel Green had been appointed an agent for paying pensions on the agency roll at Cincinnati, and conditioned for the faithful discharge of his duties as such agent by accounting to the United States and refunding any moneys unaccounted for.

The breach assigned is (Record, p. 5), that on settlement with the Treasury department a balance of $9,334.17 was found due, with interest from the 12th January, 1863, which has not been paid, wherefore an action hath accrued.

On a trial before a jury (p. 34, Record), a verdict was rendered that Joel Green owed the United States $5,671.09 principal and $3030 penalty, and that the sureties owed the United

States $5,671.09, and assessed the damages by reason of the detention at $1,531.19.

Judgment was rendered against Green for the $5,671.09, penalty $30.30, and damages for detention, $1,531.19.

Judgment was rendered against the sureties for $5,671.09, and for $1,531.19 and costs.

The defendants, the sureties, by several pleas (which will be found in pages 12, 13, 14, 15 and 16 of printed Record), plead that they signed the bond sued on, while the names of the obligors were not inserted in the bond, but blanks were left to be filled up; that when they signed their names they did so on the agreement and pledge (of those persons to whom they delivered the bond as an escrow) that the names of other persons named in the pleas should also be signed as co-obligors with the defendants, and that the bond was not to be delivered until the names of those other parties were inserted as co-obligors, and that they would not have signed the bond unless upon the pledge and belief the other parties would also sign as co-obligors; that they never did deliver the bond in fact, and only authorized the bond to be delivered when it should be so signed by those other parties; wherefore they claimed the bond was not their act and deed. There was also a separate plea of *non est factum.*

General demurrers were filed to these special pleas, but the demurrers were overruled (Record, p. 19), after which replications were filed, taking issue upon the facts pleaded (Record, p. 20, 21, 22, 23).

The principal question arising in the case is upon the rulings of the court on the trial, which are presented in the bill of exceptions (Record, p. 24).

To prove the facts alleged in the special pleas on the trial of the cause, the defendants offered the several defendants as witnesses. The United States attorney objected to the competency of these persons to testify, because they were parties to the record, and the court held them to be incompetent and refused to permit them to testify. To this ruling of the court the defendants then excepted, and having no other testimony, a verdict was rendered against the defendants.

If this ruling was correct, we suppose the judgment must be affirmed; if incorrect, we claim the judgment must be reversed.

By the Code of Ohio, 2d Swan & Critchfield, 1035, it is provided that no person shall be disqualified from testifying in any civil action by reason of his interest in the event of the same as a party or otherwise.

In *Wright* v. *Bates*, 2 Black. Rep. 536, this court reversed the judgment of the circuit court, because the judge had refused to permit a party to the suit in that court to testify in the case. The supreme court then holding, as they had always previously held, that the local laws of the state in which the case is tried declaring what evidence should be used is binding upon the courts of the United States.

This decision, of course, is decisive of this suit, unless it can be established that the United States, being a party, requires a different rule to be established. We can not understand why a different rule should be recognized in a case where the United States is plaintiff from that where a citizen is plaintiff.

We claim that, independent of the statute of Ohio, this evidence was competent under a statute law of the United States.

By the 3d section of the act passed by congress, p. 351 of acts of 1st session, 38th congress, it is expressly provided:

"That in the courts of the United States there shall be no "exclusion of any witness on account of color, nor in civil "actions because he is a party to or interested in the issue tried."

Now by this act it is specially provided, that in all courts of the United States a witness shall not be excluded on account of color. This enables a colored person to testify in criminal cases where he is not the party indicted; and by the last clause it is declared that in all civil cases in the United States a person shall not be excluded because he is a party in the cause, or because he is a party to the suit.

We claim that, independent of the decision of this court in 2d Black., above referred to, the act of congress declaring that in the courts of the United States in civil cases, no man shall be excluded from testifying merely because he is a party, applies to all causes of a civil nature, no matter who may be the parties; and as the statute does not except cases in which the United States are a party, we insist the court can not make any such exception.

And surely the court below was not justified in excluding the witness in 1866, when this case was tried.

It is claimed that in the case of *Jones* v. *The United States*, 1 Court of Claims, 388, that court decided that in that court a party to the suit could not testify in a case where the United States was a party, unless called upon by the solicitor of the United States to do so.

The court in that case held, first, that the act of congress permitting parties to testify in the courts of the District of Col-

umbia *did not apply to that court* which was established by an act of congress, and might hold its sessions in any part of the United States, and was not confined to the district.

Second. That there was a provision in the acts establishing the court of claims, enabling the solicitor of the United States, if he saw proper to examine the party as a witness, and thereby impliedly excluding the other party from testifying on his own behalf.

Third. That inasmuch as the United States was not mentioned in the statute, the court was not bound to admit such testimony.

That case has no necessary application to the present case.

It is claimed that the government is not embraced in any act unless specially named, but this is not true as a general proposition. In the case of *The State of Ohio* v. *Baum*, 6 Ohio Rep. 383, the State claimed a right to a specific performance of a parol contract. The defense set up was the statute of frauds. The State claimed she was not bound or affected by the language of that statute. But the court held the State was as much bound as individuals, although she was not named in the statute.

We claim the government is as much bound by the language of a statute regulating the admission of evidence in civil suits where it is a party as any individual, in the absence of any express stipulation contained in the statute. In fact it ought to be bound, unless it provides that it shall not apply to cases in which the United States is a party.

A[illegible]uch we understand to be the decision of the English cour[illegible] Those courts do not permit parties in criminal cases to

be witnesses. But their statutes permitting parties in civil suits to testify is applied as well to civil suits in which the government is a party as those in which individuals are parties.

The case of *Attorney General* v. *Radcliff*, 10 Excheq. Reports, 84, referred to in *Jones* v. *United States*, 1 Court of Claims, fully establishes our view of the law. In that case the court were unanimous in the opinion that if that case was a civil case the party was competent. But the judges were equally divided upon the question whether that case was or was not a criminal suit, and being so divided the writ of error failed.

No objection was made that the law admitting parties to testify did not embrace government suits, and the judges admitted that if the case was a civil suit, the witness was competent to testify.

That this is a civil suit no one can question.

We claim the act of congress not having excepted the United States in civil suits, it is not proper for this court to make the exception. To do so would be to make the law, not to administer it.

There is no more reason for excepting the United States from the operation of this act of congress relating to evidence, than of excepting her from state laws relating to imprisonment for debt.

The United States being an execution creditor, is subject to the laws regulating imprisonment for debt.

United States v. *Knight*, 14 Peters, 301.

In this last case in a suit for breach of a prison bounds bond, it was claimed the United States was not bound as other liti-

gants, because not expressly named in the act of congress of May 19, 1828.

The words of that act are as follows:

"And be it further enacted, that writs of execution, and other "final process issued on judgments and decrees rendered in "any of the courts of the United States, and the proceedings "thereon shall be the same, except their style in each state as "are now used in the courts of such state," etc.

It was claimed to be a settled rule, that in general statutes which regulate the recovery of debts, the government is not bound unless they are made applicable in express terms, or by necessary implication.

But this court said, "that where an act of parliament is made "for the public good, the advancement of religion and justice, "and to prevent injury and wrong, *the king shall be bound by "such act though not particularly named therein.*" Where the right of the king or public is divested or taken away, he shall not be included or barred unless named.

"We feel satisfied that where, as in this case, a statute which "proposes only to regulate the mode of proceeding in suits does "not divest the public of any right, does not violate any prin- "ciple of public policy."

The court had previously given a construction to the act of 1828, in *Beers* v. *Haughton*, 9 Peters, 355.

That decision was confirmed in this case of *The United States* v. *Knight*, and this additional proposition also decided that the act applied as well to civil cases in which the United States were a party as to other cases.

We consider this last case as having fully decided the case

now before the court. If such a law embraces an execution issued upon judgment obtained by the United States, it will surely embrace the evidence to be introduced in a civil suit in which the United States is a voluntary party.

We think it useless to pursue the argument further. We hope the judgment will be reversed.

CHARLES FOX,
Attorney for Plffs in Error.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

JOEL C. GREEN, DONN PIATT, HUGH McGLINCEY, JOHN L. VATTIER, JOHN W. GARRISON, LAFAYETTE LA BORTEAUX, and M. H. MEDARY, *Plaintiffs in Error.*
vs.
THE UNITED STATES.
No. 155.

In error to the Circuit Court of the United States for the Southern District of Ohio.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This was an action of debt brought by the United States in the circuit court of the United States for the southern district of Ohio, against the principal and seven sureties on the official bond of Joel C. Green, as pension agent at Cincinnati, to recover a balance of $9,334 17 claimed to be due the United States on the adjustment of his accounts at the Treasury, with interest thereon from January 12, 1863. One of the sureties was not found within the district, was not served with process, and did not appear.

The declaration was filed March 31, 1863, and set forth, that on the 1st of October, 1857, the defendants, by their writing obligatory of that date, acknowledged themselves to be jointly and severally bound unto the plaintiffs in the sum of $100,000, the condition of their said writing obligatory being for the faithful discharge by said Green of his duties as said agent, and that he should regularly account, when required, for all moneys received by him from time to time remaining in his hands unaccounted for: that the said Green, as such agent, afterwards, from time to time, received divers large sums of public money to be disbursed by him for paying pensions, and also, from time to time, rendered to the proper officer of the Treasury Department his accounts for such receipts and disbursements; and that subsequently, on the 12th of January, 1863, his accounts were settled and adjusted at the Treasury, and a balance was then and there found to be due from him to the plaintiffs, of the moneys so received by him as aforesaid, amounting to the sum of $9,334 17. It then averred that the said Green had not faithfully discharged his duties as agent, nor had he or any other of the defendants regularly accounted for all moneys received by him; that neither he nor any other of the defendants had at any time refunded any public moneys remaining in his hands unaccounted for, and that, though often required, neither he nor any other of the defendants had accounted for and paid to the plaintiffs the said sum of money found due the plaintiffs as aforesaid,

or any part thereof, whereby the said writing obligatory had become forfeited to the plaintiffs, and an action had accrued to them thereon, &c; concluding with an *ad damnum* of $20,000. (See printed transcript, pp. 2 to 4.)

The bond declared on is understood to have been given under the provisions of the 3d section of the act of May 24, 1828, (4 Stat. 308,) and is made a part of the Record. (See printed transcript, pp. 4 and 5.)

Five sureties, defendants, jointly pleaded as follows: (The principal and one surety, defendants, and both served with process, not appearing.)

1st. *Non est factum.*

2d. That the bond was obtained from them by persons acting on plaintiffs' behalf, and others in collusion therewith, by fraud, covin, and misrepresentation; concluding with a verification.

3d. That the bond was obtained from them by the agents of the plaintiffs, and others in collusion therewith, by false and fraudulent representations, to wit: That before the execution thereof, and before the same was filled up with the names of the obligors, and while the same was in blank as to the names of the obligors, the said agents of the plaintiffs, and others in collusion with them, represented and stated to the defendants, to induce them to sign said bond, that the said blanks were to be filled up with the names of E. M. Shield, Moses Swazey, James Wise, and S. B. W. McLean, and that said Shield, Swazey, Wise, and McLean were to be joint

obligors with the defendants in said bond, and were to sign and seal the same after the defendants had signed it; that, upon the faith of these representations, the defendants signed their names to said bond, not then filled up; and that, without such assurance that said Shield, Swazey, Wise, and McLean were to be obligors in said bond, the defendants would not have assented to place their names thereon; that said Shield, Swazey, Wise, and McLean did not sign or seal said bond, and did not become parties thereto, but, on the contrary, the said agents of the plaintiffs, and those in collusion with them, after the signatures of the defendants were thus procured as aforesaid, filled up the blanks in said bond with other and different names, and made it a writing obligatory differing altogether from the obligation signed by the defendants, and differing from the obligation they agreed to sign; concluding with a verification.

4th. That the laws, rules, and regulations of the Treasury Department in force at the time the bond was signed, for the safety of both the plaintiffs and defendants, required that the pension agent, Green, should keep his moneys with the collector of customs at Cincinnati; that said agent, Green, and said collector of customs, should report at least quarterly to the department at Washington their disbursements and the amount of moneys on hand, and said collector should report also on whose account he held deposits and the amount thereof; that, without the knowledge of defendants, but

with the knowledge of the agents of plaintiffs and the proper officers of the department, said Green did not keep his moneys with the collector of customs at Cincinnati; that he did not so report, nor did the collector so report, to the department aforesaid; and that if any defalcation did occur on the part of said agent, Green, it occurred through the carelessness, inattention, illegal conduct, and mismanagement of the officers of the department, the agents and officers of plaintiffs; concluding with a verification.

5th. That the laws, rules, and regulations aforesaid, for the safety and security of both plaintiffs and defendants, imposed upon the officers and agents of plaintiffs and the Treasury Department the duty of ascertaining quarterly the amount of moneys on hand with said agent, Green, where deposited, and the amount of disbursements made by him, and required him to keep his deposits with the United States depositary at Cincinnati; all which they, said agents and officers of plaintiffs, without the knowledge of defendants, refused and neglected to do, to the injury of the latter; and that if any defalcation has occurred in the accounts of said Green, the same is by reason of the default and illegal and wrongful acts of said agents and officers of plaintiffs failing to perform the duties required of them by the laws, rules, and regulations aforesaid under which the bond was signed; concluding with a verification.

6th. That the bond was signed by defendants on the 1st of October, 1857, for the purpose and with the intent

that defendants, together with E. M. Shield, Moses Swazey, and James Wise should become surety for the faithful discharge by said Green of his duties as pension agent; that defendants' signatures were obtained to said bond when the same was in blank as to the obligors; that by the representations and procuration of plaintiffs' agents and others in collusion with them, and parties having possession of said bond for the purpose of procuring sureties thereto, defendants signed said bond in blank, with the assurance and upon the condition that said Shield, Swazey, and Wise were to become joint obligors with them thereon; that defendants signed their names to said bond upon said conditions, and left the same in possession of plaintiffs' agents and the parties procuring sureties thereto, upon the agreement and understanding that said bond was to be retained by them until said Shield, Swazey, and Wise executed the same, and not to be delivered as a bond until the same was so executed by the latter; that said bond was not to stand or be in force against defendants until so signed by said Shield, Swazey, and Wise; that said bond, so signed by defendants in blank, was not afterwards at any time signed by said Shield, Swazey, or Wise, but that, contrary to the agreement made with defendants, and contrary to the conditions upon which they put their names upon said blank bond, plaintiffs' agents, the parties having possession of the bond, and with whom it was left as an escrow as aforesaid, caused the same to be signed by other and different parties; and the same never was

signed by either Shield, Swazey, or Wise, whereby the said bond, so signed and delivered by defendants upon the conditions aforesaid, became and was wholly discharged, annulled, and vacated, and so the said bond is not their deed; concluding with a tender of issue. (See for the foregoing pleas, printed record, pp. 7 to 10.)

Defendants also annexed to their pleas notice of special matter to be given in evidence by them, by way of defence. (*Ibid.*, pp. 8, 9.)

Issue was joined on the first plea. The other pleas were demurred to, and special causes of demurrer assigned. (*Ibid.*, pp. 10, 11.)

The court sustained the demurrers, and overruled the 2d, 3d, 4th, 5th, and 6th pleas. Leave was then granted to the plaintiffs to amend their declaration, and to the defendants to plead further thereto. Also, on motion of plaintiffs, the notice of special matter annexed to be pleas of defendants was at the same time stricken out for insufficiency. (*Ibid.*, p. 11.)

Separate pleas were afterwards put in by the same five of the defendants, viz: Piatt, McGlincey, Vattier, Garrison, and Medary. (*Ibid.*, pp. 12 to 16.) Piatt pleaded specially, as follows:

1st. That the defendant signed and sealed the bond while it was in blank as to the names of the obligors; that he did this at the request of said Green, upon the assurance and agreement that it should also be signed and sealed by E. M. Shield and Moses Swazey, as joint obligors with him, and that it should not be delivered as

a bond until signed and sealed by the said Shield and Swazey; that the names of the latter were not, nor were either of them, obtained to said bond; and that the defendant would not have signed the same without being assured, and upon the condition, that the signatures of said Shield and Swazey should be obtained thereto as joint obligors before it was delivered as a valid bond; concluding with a verification.

2d. That the bond was signed by the defendant while it was in blank as to the names of the obligors, upon the condition that E. M. Shield and Moses Swazey should also sign the same as joint obligors with him; that said bond, thus signed, was left with said Green as an escrow to be by him delivered to plaintiffs, in case it was afterwards executed by said Shield and Swazey, and not otherwise; that said Shield and Swazey never did sign said bond, and it never was delivered as a valid bond of defendant, whereby the same so signed, upon the condition aforesaid, became, and was wholly annulled and vacated; and so the said bond is not his deed; concluding with a tender of issue.

The separate pleas of the other defendants named were of like import.

Each of these special pleas was separately demurred to, but the demurrers were overruled, and plaintiffs given leave to file replications. (*Ibid.*, pp. 16 to 19.) The judgment of the court overruling these demurrers was excepted to by plaintiffs, and the exception made part of the record. (*Ibid.*, p. 23.)

Replications were then filed by plaintiffs, denying the allegations contained in the said separate pleas, and averring that when the defendants signed, sealed, and delivered said bond to plaintiffs, they did not disclose to plaintiffs or their agents that any other person or persons besides the defendants were to execute the same, and did not give plaintiffs, or their agents, any notice that said bond was not complete; but that, on the contrary, the defendants signed, sealed, and delivered said bond as a full and complete obligation, legally binding alike on all the defendants, and thus induced plaintiffs to accept the same as the act of the defendants. (*Ibid.*, pp. 20 to 23.)

The parties afterwards went to trial, and a verdict and judgment were rendered for plaintiffs; whereupon certain defendants took a bill of exceptions, and sued out this writ of error. (*Ibid.*, pp. 23 to 26.)

The bill of exceptions reads as follows:

"Be it remembered, that on the trial of this cause, at the June term, 1866, of said circuit court, &c., the plaintiffs, to maintain the issue upon the part of the Government, offered in evidence to the court and jury aforesaid the bond counted upon in the declaration; also, evidence tending to prove that Joel C. Green was pension agent at Cincinnati, and that he was indebted to the Government in a large sum of money, and that the allegations of plaintiff as to the breaches assigned in the declaration were true, and that the defendants had signed and sealed the bond counted upon, and

rested. And, thereupon, the defendants, Donn Piatt, Hugh McGlincey, John L. Vattier, J. W. Garrison, and M. H. Medary, to maintain the issues on their part, called as a witness Donn Piatt, one of the defendants, each having filed separate pleas, and offered to prove by this witness that the bond counted upon in the declaration, and offered in evidence to the jury, was never delivered to the plaintiffs; that it was placed in his hands as an escrow, to be delivered to the Government upon the signing of said bond by John Swazey and E. M. Shield; that said Swazey and Shield did not sign said bond, and the same never was delivered by, and never was a valid bond, as against the defendants, Piatt, McGlincey, Garrison, Vattier, and Medary; but the district attorney interposed and objected to the evidence, upon the ground that the witness was a party to the action, one of the defendants, and, the Government being plantiffs, could not testify; and upon argument, the court sustained the objection, and held the witness incompetent to testify on the grounds stated by the district attorney, and would not permit the defendants to examine said witness, nor to prove to the jury the facts aforesaid by said witness; to which opinion of the court, &c., the defendants excepted, &c. Thereupon, the defendant, Donn Piatt, to maintain the issue on his part, called as a witness on his behalf, Hugh McGlincey, and by said witness offered to prove to the jury that the bond counted upon and offered in evidence to the jury by the plaintiff was signed by said Piatt and said McGlincey

in blank, upon the promise and agreement that the bond was to be filled up with the names of John Swazey, James Wise, and E. M. Shield; that said names of Swazey, Wise, and Shield were not put in said bond, nor did said Swazey, Wise, or Shields, sign said bond; and it was further agreed, when they signed their names to said paper in blank, that the same should not be used, or delivered, or perfected as a bond, without the signatures of said Swazey, Wise, and Shields; and that said bond was to be kept and held as an escrow, to be delivered only upon such conditions and terms being complied with; that said terms and agreement never were complied with, and that said bond never was completed and delivered as agreed upon, and that the defendants never did sign, or consent to, or make the bond offered in evidence by the plaintiffs; but the district attorney interposed and objected to the witness and to the evidence, upon the ground that the witness was a party to the cause, one of the defendants, and the Government being plaintiffs, he could not testify; and, upon argument, the court sustained the objection, and ruled that the defendant, nor either of the defendants, could testify in this cause, and excluded the witness, and refused to let defendants prove said facts to the jury by said witness, or by either of the defendants; and, thereupon, the defendants excepted to said ruling of the court, &c. The defendants having no other witness than those named as defendants, the case went to the jury upon the evidence of plaintiffs, who returned a verdict for the plaintiffs,

assessing damages at $7,202 28. And, thereupon, the court entered a judgment against the defendants for the amount of the verdict; to all which ruling, opinions, and proceedings of the court, the defendants excepted," &c.

ARGUMENT.

I. The judgment is, that the plaintiffs recover of the defendant, Joel C. Green, "the said sum of $5,671 $\frac{9}{100}$ principal, and the said sum of $3,030 penalty, and the sum of $1,531 $\frac{19}{100}$, by reason of the detention thereof; and that plaintiffs recover of said Donn Piatt, Hugh McGlincey, John L. Vattier, John W. Garrison, Lafayette La Boiteaux, and Mahlon Medary, the sum of $5,971 $\frac{9}{100}$, and the sum of $1,531 $\frac{19}{100}$ by reason of the detention thereof, and also their costs," &c. (Printed transcript, p. 23.)

The judgment against Green for $3,030 penalty is supposed to be for commissions forfeited under the 1st section of the act of March 3, 1797. (1 Stat., 512.)

Green and Boiteaux must have been defaulted, as they were served with process, but did not appear.

The writ of error appears to have been sued out by all the sureties who were served with process, including Boiteaux, but not by Green. (Printed transcript, p. 25.)

The error relied upon by the plaintiffs in error is the ruling of the court excluding certain witnesses offered who were parties defendant, which ruling is

found in the bill of exceptions. (Printed transcript, p. 24; brief of plaintiffs in error, p. 3.)

Waiving the informality that the judgment and verdict were not for the penalty of the bond, but for the amount due in equity, (see Huff, *et al.*, *vs.* Hutchinson, 14 Howard, 586.) which is no ground of error, the judgment on the verdict is, in its nature, joint against all the defendants, and all the defendants should have united in bringing the writ of error, unless there was a summons and severance, which there was not, unless the form in which the judgment was actually entered is to be regarded as equivalent thereto. If there is a non-joinder of proper parties plaintiffs in error the writ of error must be dismissed.

II. The statutes of the United States relating to the competency of the witnesses offered are: the 34th section of the act of September 24, 1789, (1 Stat., 92,) the effect of which, in making parties admissable as witnesses in courts of the United States held within a State whose laws admit them as witnesses, has been determined by this court in Vance *vs.* Campbell, 1 Black, 427; Haussknecht *vs.* Claypool, *ibid.*, 431; Wright *vs.* Bales, 2 Black, 535; Ryan *vs.* Bindley, 1 Wall., 67; the 1st section of the act of July 16, 1862, (12 Stat., 588,) in these words: "That the laws of the

State in which the court shall be held, shall be the rules of decision as to the competency of witnesses in the courts of the United States in trials at common law," &c.; the proviso of the third section of the act of July 2, 1864, (13 Stat., 351,) in these words, to wit: "That in the courts of the United States there shall be no exclusion of any witness on account of color, nor, in civil actions, because he is a party to or interested in the issue tried;" and the act of March 3, 1865, (13 Stat., 533,) amendatory of the last named proviso, adding to it these words, to wit: "That in actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transactions with or statements by the testator, intestate, or ward, unless called to testify thereto by the opposite party, or required to testify thereto by the court."

The law of the State of Ohio relating to the competency of parties as witnesses in force when this suit was tried is title 10, chap. I, sections 310 to 315, 2d vol. Swann & Critchfield's Revised Statutes of Ohio, pp. 1035, *et seq.*

These statutes, both of the United States and of the State, were plainly intended to confer the same privilege on both parties to a suit. In King *vs.* Barrett, 11 Ohio State R., 264, the supreme court of Ohio say of the Code, that "it clearly aims to give each party an equal standing in court in respect to evidence." Do

these provisions of the laws of the United States, or of the State of Ohio, as adopted by the laws of the United States, embrace parties defendants to a suit by the United States, a party plaintiff that cannot testify?

In Jones *vs.* The United States, 1 Nott & Huntington, p. 384, it was held that a claimant could not testify as a witness in his own behalf in a suit against the United States in the Court of Claims, partly on the ground that the United States are not within the purview of the statutory provisions named. The opinion contains the authorities on the application and modification of the doctrine, that "the king is not bound by any act of Parliament, unless he be named therein by special and particular words." The 2d section of the act of March 2, 1867, (14 Stat., 457,) passed since the trial of the suit at bar, enacted that the proviso of the 3d section of the act of July 2, 1864, above cited, "shall be construed to embrace all suits to which the United States shall be a party in the Court of Claims, either plaintiff or defendant."

The dissenting opinion of Casey, Ch. J., in Jones *vs.* The United States, is found in 2 Nott & Huntington, 605.

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